

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Miriam Lynch	Team: Squad #9	CCRB Case #: 201605437	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 06/03/2016 11:25 AM	Location of Incident: West 145th Street between Convent Avenue and Amsterdam Avenue	Precinct: 30	18 Mo. SOL 12/3/2017	EO SOL 12/3/2017	
Date/Time CV Reported Tue, 06/21/2016 9:14 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 06/21/2016 9:14 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Anis Nikocevic	03281	937186	NARCBMN
2. SDS Robert Kelly	03349	924018	NARCBMN
3. DI Patrick Cortright	00000	910420	NARCBMN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DC Lori Pollock	00000	892568	DBMN

Officer(s)	Allegation	Investigator Recommendation
A.DI Patrick Cortright	Force: Deputy Inspector Patrick Cortright pointed his gun at § 87(2)(b)	
B.SGT Anis Nikocevic	Force: Sergeant Anis Nikocevic pointed his gun at § 87(2)(b) and § 87(2)(b)	
C.SDS Robert Kelly	Force: Sergeant Robert Kelly pointed his gun at § 87(2)(b) and § 87(2)(b)	
D.DI Patrick Cortright	Abuse: Deputy Inspector Patrick Cortright searched the vehicle in which § 87(2)(b) was an occupant.	
E.SGT Anis Nikocevic	Abuse: Sergeant Anis Nikocevic searched the vehicle in which § 87(2)(b) was an occupant.	

### Case Summary

On June 3, 2016, at approximately 11:25 a.m., § 87(2)(b) was driving his car, a red 2002 Toyota Camry, with his brother § 87(2)(b) their cousin § 87(2)(b) and their friend § 87(2)(b) as passengers. § 87(2)(b) was in the front passenger's side seat, § 87(2)(b) was in the back driver's side seat, and § 87(2)(b) was in the back passenger's side seat. § 87(2)(b) had a small amount of marijuana in the back of the vehicle. § 87(2)(b) double-parked at the intersection of Seventh Avenue and West 145<sup>th</sup> Street in Manhattan, so that they could buy cigarette rolling papers from a nearby bodega. The car beside which they parked belonged to Deputy Chief Lori Pollock, of the Manhattan North Detective Bureau, who indicated to the group with a brief burst of the siren that § 87(2)(b)'s vehicle should move.

Deputy Chief Pollock then called Deputy Inspector Patrick Cortright of Manhattan North Narcotics, to tell him what she had seen. She provided Deputy Inspector Cortright with the license plate number of the vehicle, which Deputy Inspector Cortright confirmed had an expired registration. Deputy Inspector Cortright then left the command headquarters, at Broadway and West 147<sup>th</sup> Street in Manhattan, and took Sgt. Anis Nikocecic and Sgt. Robert Kelly, both of Manhattan North Narcotics, with him to stop the vehicle that Deputy Chief Pollock had observed. When Deputy Inspector Cortright stopped the vehicle, he approached it with his gun drawn and pointed at § 87(2)(b) (**Allegation A**). Sgt. Nikocecic and Sgt. Kelly also allegedly pointed their guns at the vehicle (**Allegations B and C**). Sgt. Nikocecic then ordered the civilians out of the vehicle. Deputy Inspector Cortright and Sgt. Nikocecic then performed a cursory search of the vehicle (**Allegations D and E**). After the vehicle was searched, § 87(2)(b) and § 87(2)(b) were placed under arrest. The car was transported to the 30<sup>th</sup> Precinct stationhouse, where an inventory search yielded a firearm.

§ 87(2)(b) and § 87(2)(b) were released without being charged with a crime. § 87(2)(b) and § 87(2)(b) were charged with § 87(2)(b) (Board Review 1).

§ 87(2)(g)

No video footage was available for this incident.

### Mediation, Civil and Criminal Histories

- This case was not suitable for mediation, due to the arrests.
- A FOIL request for a notice of claim request was submitted to the New York City Office of the Comptroller on September 22, 2016. The results will be added to the case file upon receipt (Board Review 2).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- This is the first complaint involving § 87(2)(b) or § 87(2)(b) (Board Reviews 3, 4, 5, and 6).

- Deputy Inspector Cortright has been a member of service for 27 years. 11 prior CCRB complaints and 25 previous allegations have been filed against him. In case 200412058, a vehicle stop allegation was substantiated against him. Charges were recommended, but he received instructions (Board Review 7).
  - § 87(2)(g) [REDACTED]
- Sgt. Kelly has been a member of service for 17 years. Nine previous CCRB complaints have been filed against him, for a total of 23 prior allegations. In case 201213132, threat of arrest, threat of force, discourtesy, stop, and frisk allegations were substantiated.
  - § 87(2)(g), § 87(4-b) [REDACTED]
- Sgt. Nikocecic has been a member of service for 11 years. 13 previous CCRB complaints have been filed against him, for a total of 29 prior allegations. In case 20135244, a vehicle search was substantiated, and the CCRB recommended charges. The NYPD declined to levy discipline on Sgt. Nikocecic for this case (Board Review 7).
  - § 87(2)(g) [REDACTED]

#### Potential Issues

- § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] each missed two investigative appointments, and did not provide sworn statements.

#### Findings and Recommendations

##### Allegations Not Pleaded

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

##### Allegation A -Force: Deputy Inspector Patrick Cortright pointed his gun at § 87(2)(b) [REDACTED]

It is undisputed that after Deputy Inspector Cortright made the decision to stop the vehicle in which § 87(2)(b) [REDACTED] was an occupant, after hearing about the vehicle from Deputy Chief Pollock. It is undisputed that Deputy Inspector followed § 87(2)(b) [REDACTED]'s vehicle for one to four blocks before stopping it. It is undisputed that Deputy Inspector Cortright stopped § 87(2)(b) [REDACTED]'s vehicle by pulling his own vehicle in front of it as it was coming to a stop at the intersection of West 145<sup>th</sup> Street and Convent Avenue. It is undisputed that after Deputy Inspector Cortright stopped § 87(2)(b) [REDACTED]'s vehicle by pulling in front of it, he got out of his own vehicle, and pointed his firearm towards § 87(2)(b) [REDACTED].

§ 87(2)(b) [REDACTED] corroborated by § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] in unverified phone statements, testified that Deputy Inspector Cortright got out of his vehicle and

immediately pointed his firearm at § 87(2)(b) lowering it only when all of the occupants had exited the vehicle (Board Reviews 8, 9, 10, and 11).

Deputy Inspector Cortright also testified that he pointed his firearm at § 87(2)(b). He stated that § 87(2)(b) the driver, was making small movements in the seat immediately after he stopped the vehicle. Additionally, Deputy Inspector Cortright stated that he could not see § 87(2)(b)'s hands immediately after the vehicle was stopped. These factors, in conjunction, caused Deputy Inspector Cortright to fear for his safety, so he drew and pointed his firearm at § 87(2)(b) until he came out of the vehicle (Board Review 12).

Neither Sgt. Kelly nor Sgt. Nikocecic remembered Deputy Inspector Cortright pointing his firearm at § 87(2)(b) (Board Reviews 13 and 14).

People v. Gliner OATH Index 955/00 has established that an officer may point his firearm if he has reasonable fear for his safety (Board Review 15).

§ 87(2)(g)

§ 87(2)(g)

**Allegation B –Force: Sergeant Anis Nikocecic pointed his gun at § 87(2)(b)**

**and § 87(2)(b)**

**Allegation C –Force: Sergeant Robert Kelly pointed his gun at § 87(2)(b)**

**and § 87(2)(b)**

§ 87(2)(g)

§ 87(2)(b) testified that all of the officers in Deputy Inspector Cortright's vehicle pointed their guns at all of the occupants of the vehicle. He was corroborated in unverified phone statements by § 87(2)(b) and § 87(2)(b) (Board Reviews 8, 9, 10, and 11).

Both Sgt. Nikocecic and Sgt. Kelly denied pointing their firearms towards the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. Deputy Inspector Cortright did not remember if Sgt. Nikocecic or Sgt. Kelly pointed his gun at the vehicle (Board Reviews 12, 13, and 14).

§ 87(2)(g)

§ 87(2)(g)

**Allegation D -Abuse of Authority: Deputy Inspector Patrick Cortright searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation E – Sergeant Anis Nikocecic searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that Deputy Inspector Cortright and Sgt. Nikocecic searched the front and

backseat of § 87(2)(b)'s vehicle. It is undisputed that § 87(2)(b) had a small amount of marijuana in the backseat of the vehicle, and that marijuana had been smoked in the vehicle. § 87(2)(b) stated that in the two to three hours preceding the incident, he, § 87(2)(b) and § 87(2)(b) had been smoking marijuana in the vehicle with the windows rolled up. He also stated that § 87(2)(b) had a small amount of marijuana in the backseat of the vehicle. He also stated that officers looked into the front seat and backseat of the car as he, § 87(2)(b) and § 87(2)(b) were being taken into custody (Board Review 8).

In a phone statement, § 87(2)(b) corroborated that he had a small amount of marijuana in his possession, which he did not want to try to hide, for fear of being accused of tampering with evidence. He stated that the marijuana was on top of his cellphone, which was in the middle of the backseat, when the car was stopped (Board Review 9). § 87(2)(b) and § 87(2)(b) corroborated, in unverified phone statements, that there was a small amount of marijuana in the backseat, on the seat itself, in plain view (Board Reviews 10 and 11).

Sgt. Nikocecic testified that he smelled marijuana in the vehicle upon approaching the car after it had been stopped. He also stated that when he ordered each of the occupants out of the vehicle, he saw a small amount of marijuana in the backseat. He also stated that he is trained to identify the odor of marijuana. The smell and sight of marijuana in the vehicle prompted him to search the front seat and back seat of the car, to recover the marijuana, and scan the vehicle for additional contraband (Board Review 13).

Deputy Inspector Cortright testified that he searched the back seat of the vehicle. He stated that he did so after Sgt. Nikocecic told him that he saw marijuana in the back seat of the car, and he did so to view the marijuana himself (Board Review 12).

People v. Johnson, 901 N.Y.2d 909 (2009) allows officers trained in identifying the smell of marijuana to search a vehicle without a warrant when they detect the odor of the drug (Board Review 16).

§ 87(2)(g)

§ 87(2)(g)

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Squad #9

Investigator: \_\_\_\_\_

Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date